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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

PATENT

In re patent application of: Jim Yew-Wah Ho

Att. Docket No.: 2019.222

Serial No.: 09/993,488

Examiner:

Filed: November 27, 2001

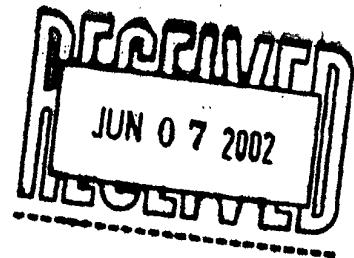
Art Unit: 2881

For: LASER DIODE-EXCITED BIOLOGICAL PARTICLE DETECTION SYSTEM

INFORMATION DISCLOSURE STATEMENT

Honorable Assistant Commissioner of Patents

Washington, D.C. 20231



SIR:

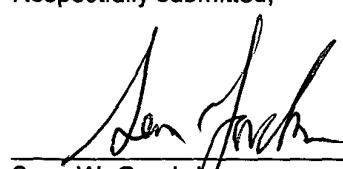
Submitted herewith are several references which have come to the applicant's attention and which may be deemed relevant to the above-identified application, together with form PTO/SB/08A listing the references.

It is requested that these references be made of record in the present application.

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JUN 3 2002
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Respectfully submitted,

Date: May 30/02


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Registration No. 39, 568

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PATENT

In re patent application of: Jim Yew-Wah Ho

Att. Docket No.: 2019.222

Serial No.: 09/993,488

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Art Unit: 2881

For: **LASER DIODE-EXCITED BIOLOGICAL PARTICLE DETECTION SYSTEM**

INFORMATION DISCLOSURE STATEMENT TRANSMITTAL LETTER

Assistant Commissioner of Patents

Washington, D.C. 20231

SIR:

An Information Disclosure Statement is submitted herewith pursuant to 37 C.F.R. 1.97 – 1.98.

Please note the following particulars:

[NOTE: One only of items a, b, c, and d must be checked.]

- a. The enclosed information disclosure statement is being filed within three months of the filing date of a national application, or within three months of the date of entry into the national stage as set forth in 37 C.F.R. 1.491 in an international application, or before the mailing date of a first Office Action on the merits, whichever event occurs last. (37 CFR 1.97 (b))
- b. The enclosed information disclosure statement is being filed after a first action on the merits but before the mailing date of a final action under 37 C.F.R. 1.113, or a notice of allowance under 37 C.F.R. 1.311. (37 CFR 1.97 (c))

The enclosed information disclosure statement is accompanied by [check one]

- i. A statement in part (e) below as specified in 37 C.F.R. 1.97(e), or
 ii. A check in the amount of \$240.00 required by 37 C.F.R. 1.17(p).

- c. The enclosed information disclosure statement is being filed after the mailing date of a final action under 37 C.F.R. 1.113, or a notice of allowance under 37 C.F.R. 1.311, but before payment of the issue fee. (37 CFR 1.97 (d))

PETITION: It is requested that the information being submitted be considered. {NOTE: If box (c) is checked, the following two boxes must be checked.]

PETITION FEE: a check for \$130.00 required by 37 CFR 1.17(i)(1), is enclosed,
 STATEMENT is attached to in box (e) below.

- d. The enclosed information disclosure statement is being filed pursuant to 37 C.F.R. 1.97(i), for placement in the file.

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- [] e. **Statement** [Check one] [Statement is required only if box (b)(l) or box (c) is checked.]
[] I hereby state that each item of information contained in the enclosed Information Disclosure Statement was cited in a communication from a foreign patent office in a counterpart foreign application not more than three months prior to the filing of this information disclosure statement.

or

- [] I hereby state that no item of information in the enclosed Information Disclosure Statement herewith was cited in a communication from a foreign patent office in a counterpart foreign application, or, to my knowledge after making reasonable inquiry, was known to any individual designated in 37 C.F.R. 1.5(c) more than three months prior to the filing of this Information Disclosure Statement.

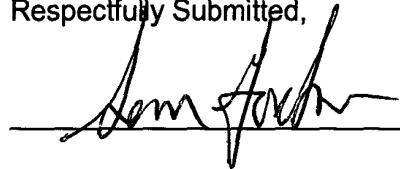
or

- [] Appropriate statement is attached.

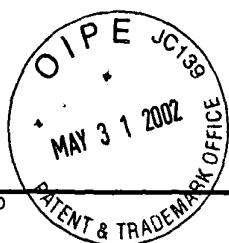
Date:

May 30/02

Respectfully Submitted,



By: Sean W. Goodwin
Registration No. 39,568



INFORMATION DISCLOSURE STATEMENT BY APPLICANT

Sheet 1 of 1

| | |
|----------------------|-------------------|
| Application No.: | 09/993,488 |
| Filing Date: | November 27, 2001 |
| First Named Inventor | Jim Yew-Wah Ho |
| Group Art Unit: | |
| Examiner Name: | |
| Attorney Docket No.: | 2019.222 |

U.S PATENT DOCUMENTS

| Initial | Document No. | Name | Date | Relevance |
|---------|--------------|-----------------|-------------------|-----------|
| | 3,566,114 | Brewer | February 23, 1971 | |
| | 5,701,012 | Ho | December 23, 1997 | |
| | 5,895,922 | Ho | April 20, 1999 | |
| | 5,999,250 | Hairston et al. | December 7, 1999 | |

FOREIGN PATENT DOCUMENTS

| Initial | Office | Number | Name | Date | Relevance | Trans |
|---------|--------|-----------|-----------|--------------|-----------|-------|
| | JP | 60-260830 | Hatsutori | June 7, 1984 | | |

OTHER PRIOR ART – NON PATENT LITERATURE DOCUMENTS

| Initial | Name (in CAPS), Title of Article, Title of Item, Date, Page(s), Volume-Issue No., etc. | RECEIVED |
|---------|--|----------|
| ✓ | Today Science Tomorrow Defence "Detection of Biological Warfare Agents" PP. 11-18 Jim Ho | 2002 |
| ✓ | Biotechnol. Prog., 1991, 7:21-27 "Monitoring Cell Concentration and Activity by Multiple Excitation Fluorometry" | 2002 |
| ✓ | Suffield Memorandum No. 1421 "Detection of BW Agents: Flow cytometry measurement of Bacillus Subtilis (BG) Spore Fluorescence", 1993 | 2002 |
| ✓ | Aerosol Science and Technology 4:89-97 (1985) "Performance of a TSI aerodynamic particle sizer", B.T. Chen et al. | 2002 |
| ✓ | Practical Flow Cytometry, Second Edition, 1988, p.84 "How a flow cytometer works" A.R> Liss, Inc NY,NY by Shapiro et al. | 2002 |
| ✓ | Schuette et al. "The design and operation of a dual-beam long-focal-length fluorometer for monitoring the oxidative metabolism in vivo" Medical & Biological Engineering Vol 14, No. 2 p.235-238, March 1976 | 2002 |

Examiner Signature

Date Considered

* Examiner: Initial if considered, whether or not citation is in conformance with MPEP §609. Draw line through citation if not in conformance and not considered. Include copy of this form with next communication to the applicant.

NOTICE OF DUTY OF DISCLOSURE**IMPORTANT****Duty of Disclosure (Rule 56)**

It is mandatory that information of which you are aware or become aware of during the prosecution of the application up until issuance of a patent and which is "Material to patentability" be disclosed to the PTO (Information Disclosure Statement (IDS)). Submission of such information is necessary to comply with the rules of the Patent and Trademark Office (PTO) and to lessen the likelihood of attacks, in any subsequent litigation, on the validity or enforceability of the patent on the ground of "Inequitable conduct" Information which must be submitted includes not only printed publications but also offers for sale and public uses of the invention in the U.S. more than one year prior to the U.S. filing date. The PTO considers information material to patentability:

- "...when it is not cumulative to information already of record or being made of record in the application, and
- (1) It establishes, by itself or in combination with other information, a prima facie case of unpatentability of a claim; or
 - (2) It refutes or is inconsistent with, a position the applicant takes in:
 - (I) opposing an argument of unpatentability relied on by the office, or
 - (II) asserting an argument of patentability.

A prima facie case of unpatentability is established when the information compels a conclusion that a claim is unpatentable under the preponderance of evidence, burden-of-proof standard, giving each term in the claim its broadest reasonable construction consistent with the specification, and before any consideration is given to evidence which may be submitted in any attempt to establish a contrary conclusion of patentability."

If the materiality of the information is not clear, please send it to us, as soon as possible after its discovery, for our evaluation. The filing of an IDS shall not be considered in any way to be an admission that the information is or is considered to be material to patentability.

Timing

To minimize the necessity of paying fees in order to have such information considered by the PTO, we strongly advise you to:

- (a) send all known material information to us at the latest 1 month after a new application is filed;
- (b) send all material information to us at the latest 1 month after it is first discovered by a person having a duty of disclosure under the rule (the latter are inventors, attorneys or agents prosecuting the application and associates of the inventors or assignees involved with the application); and
- (c) send a copy of the search report in a counterpart foreign application and all references cited therein (or preferably English language equivalents thereof) to us at the latest 1 month after its mailing date from the foreign patent office.

In case (b) above, inform us of the date on which the information first came to the attention of a person having a duty of disclosure. In case (c), inform us of the mailing date from the foreign patent office of such communication.

Non-English Language References

Non-English language references will not be considered by the PTO unless:

- (1) an English language equivalent or translation is provided,
- (2) an individual associated with the filing of the application and most knowledgeable about the content of the reference provides a concise explanation of its relevance, to the best of his/her knowledge; a concise explanation may be provided by pointing out and providing a translation of the pertinent portions of the reference, or
- (3) the information was cited in a search report by a foreign patent office and an English language version or translation of the search report indicating the relevance of the reference is submitted.

To minimize questions of validity based on a non-English language reference, option (1) is preferable, especially if the invention is of commercial importance. While proceeding under option (2) or (3) may be sufficient to comply with the Rule, any resultant presumption of validity over the non-English language reference(s) may be overcome in litigation, e.g., if the explanation is shown to be inaccurate or incomplete. Also, we foresee that explanations under option (2) may be challenged in litigation on the ground that they were not made by "the person most knowledgeable"

THE DUTY OF DISCLOSURE APPLIES TO ALL INDIVIDUALS SUBSTANTIVELY INVOLVED IN THE PREPARATION OR PROSECUTION OF THE APPLICATION.

THE DUTY IS A CONTINUING OBLIGATION WHICH DOES NOT CEASE UNTIL THE PATENT IS GRANTED.

Acknowledged: Jim Yew-Wah Ho Date: 26 Nov 01
Jim Yew-Wah Ho